



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 17, 2005

Ms. Jennifer Gilchrist  
Division Chief  
City of Austin Law Department  
P. O. Box 1088  
Austin, Texas 78767-8845

OR2005-01461

Dear Ms. Gilchrist:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 219097.

The City of Austin (the "city") received a request for information pertaining to the Old West Austin Neighborhood Planning Team, including the city's contract with the mediators and the mediators' work product. You claim that some of the requested information is excepted from disclosure under sections 552.102, 552.136, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

---

<sup>1</sup>You also seek to withhold some of the submitted information under section 552.024. We note, however, that section 552.024 is not an exception to public disclosure under chapter 552 of the Government Code. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024. The proper exception to assert for this type of information is section 552.117.

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). This section applies to information in the personnel file of an employee of a governmental body. You fail to explain how any of the submitted records comprise information in the personnel file of an employee of a governmental body. Therefore, we determine that section 552.102 does not apply to the submitted records.

You next assert that some of the submitted information is excepted from disclosure under section 552.136 of the Government Code, which states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. After careful review, we find that none of the submitted information consists of a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body. *See id.* Therefore, we determine that section 552.136 does not apply to the submitted records.

We understand you to claim that section 552.117 of the Government Code may be applicable to some of the submitted information. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. We note, however, that an individual's personal post office box number is not a "home address" and therefore may not be withheld under section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) ("The legislative history of section 552.117(1)(A) makes clear that its purpose is to protect public employees from being harassed *at home*. *See* House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)." (Emphasis added.)); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the city must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The city may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential.

Finally, you claim that portions of the submitted information are excepted from public disclosure under section 552.137 of the Government Code, which provides as follows:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. We note that section 552.137 does not apply to a government employee's work e-mail address because such address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. We also note that section 552.137 does not apply to a business's general e-mail address or website address. We agree that the city must withhold most of the e-mail addresses that you have marked under section 552.137 unless their owners have affirmatively consented to their release. *See* Gov't Code § 552.137(b). We have marked the types of e-mail and website addresses that are not confidential under section 552.137 and must be released.

In summary, for those employees who timely elected to keep their personal information confidential, the city must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members under section 552.117. Except for the types of e-mail and website addresses marked for release, the city must withhold the e-mail addresses that you have marked under section 552.137 unless their owners have affirmatively consented to their release. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

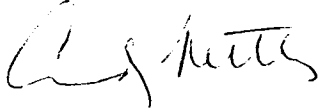
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/krl

Ref: ID# 219097

Enc. Submitted documents

c: Mr. Jake Billingsley  
c/o City of Austin Law Department  
P. O. Box 1088  
Austin, Texas 78767-8845  
(w/o enclosures)